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April 1, 2005

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 711
Washington, DC 20423-0001

Re: Ex Parte No. 656, Motor Carrier Bureaus Periodic Review Proceeding -- Reply Comments of Rocky Mountain Tariff Bureau, Inc.

Dear Secretary Williams:

Enclosed please find an original and 10 copies of the Reply Comments of Rocky Mountain Tariff Bureau, Inc.

Respectfully,

David H. Coburn
Attorney for Rocky Mountain Tariff Bureau, Inc.

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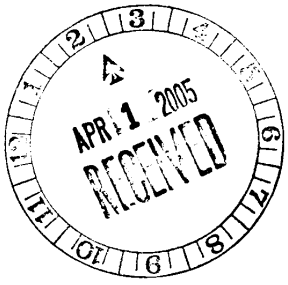

BEFORE THE
SURFACE TRANSPORTATION BOARD

EX PARTE NO. 656

MOTOR CARRIER BUREAUS
PERIODIC REVIEW PROCEEDING

REPLY COMMENTS OF ROCKY MOUNTAIN TARIFF BUREAU, INC.

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MOTOR CARRIER BUREAUS
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REPLY COMMENTS OF ROCKY MOUNTAIN TARIFF BUREAU, INC.

Rocky Mountain Tariff Bureau, Inc. ("RMB") hereby replies to the March 2, 2005 joint Opening Comments of the National Industrial Transportation League and the National Small Shipments Traffic Conference, Inc. ("Associations") opposing the continuation of antitrust immunity for the regional rate bureaus. These Associations fail in their comments, as they have failed in previous comments filed in other rate bureau proceedings over the past several years, to identify a single specific incident in which a shipper has been prejudiced by the actions taken by RMB, or any other rate bureau. Their filing, instead, consists of the same worn arguments against collective ratemaking that they have been making for years, and which this Board and is predecessor have previously rejected, most recently in its November 20, 2001 and March 27, 2003 decisions in *Section 5a Application No. 118 (Sub No. 2), et al., EC-MAC Motor Carriers Service Assn., Inc., et al.* ("*EC-MAC Proceeding*"). In that Proceeding, the Board imposed the truth-in-rates notice and a limitation on the ability of bureau carriers to impose a loss of discount penalty based on undiscounted collectively made class rates.

In essence, the Shipper Association comments constitute a petition for reconsideration of those decisions. Their effort to rehash the *EC-MAC Proceeding* is particularly inappropriate in view of the fact that the Board's order instituting this proceeding, served December 12, 2004,

stated that the Board is "particularly interested in whether anything affecting the public interest has changed *since the prior review cycle*[1]," a reference to the Board's decisions in the *EC-MAC Proceeding*. The last order in that *Proceeding* was issued less than eighteen months ago, on October 16, 2003, when the Board approved the revised RMB ratemaking agreement. Having undertaken in the *EC-MAC Proceeding* a thorough investigation of rate bureau activities and related competitive impacts culminating in that October 2003 decision, the Board should reject the Associations' effort to re-litigate issues that have only recently been resolved and that have nothing to do with anything that has changed since the *EC-MAC Proceeding* was terminated. In that regard, it bears note that the Associations do not argue or suggest that there has been any problem with the implementation of the conditions imposed on rate bureaus in that *Proceeding*.

A. The Shipper Associations Fail to Identify Any Harm from Rate Bureau Activities

At the heart of the Shipper Associations' filing is the contention that, through collective activities, rate bureau rates are at supra-competitive levels and that bureaus dampen rate competition that might otherwise exist. Starting from that proposition, they argue in favor of remedies such as a rebuttable presumption that undiscounted class rates are unreasonable, mandatory minimum discounts, and procedural changes in bureau processing of general rate increases.

However, the starting point for the Associations' position is erroneous. The motor carrier market is composed of a large number of players which are actively engaged in price competition with one another for shipper business. Indeed, such competition is intense in the LTL sector in which bureau member carriers operate, as evidenced by the widespread discounting, annually reported by the bureaus through their discount range submissions, that

[1] Emphasis added.

occurs in the industry. Nothing about the current rate bureau structure reduces that competition, since carriers use bureau rates as a benchmark for their competitive discounting. Moreover, the truth-in-rates notice now required to be given by bureau member carriers to shippers when rate quotes are based on collectively made rates ensures that shippers understand not only that discounts are available, but also the current range of the discounts offered by bureau carriers. There is no rate secrecy here, as the Associations imply.

The fact that bureaus process general rate increases (GRIs), usually annually, does not dampen the level of competition. Such GRIs have been a characteristic of the industry for decades, and competition continues to flourish. It is hard to see how the Associations' could credibly contend that GRIs are a problem for their members when such GRIs do no more than mirror the increases in the competitive marketplace taken by non-bureau carriers, including the largest carriers in the country. Moreover, the significant discounting that continues to exist in the industry dilutes the impact of any GRI, ensuring that the rate a shipper pays is a rate dictated entirely by market forces.

Of course, motor carriers are no different than any other business in requiring some rate increases to offset rising costs. The statute allows the discussion through immunized bureaus of "rate adjustments of general application based on industry average carrier costs (so long as there is no discussion of individual markets or particular single line rates)". 49 U.S.C. 13703(a)(1)(G). If shippers believe that any such GRIs are unreasonable, they are not (despite the Associations' suggestion to the contrary) without any remedy. GRIs are in fact subject to protest before the Board if a party believes that the resulting rates are unreasonable. 49 U.S.C. § 13701(a)(1)(C). Thus, the Board has regulatory power, which has been exercised in the past, to address the precise issue on which the Associations are focused.

Further, the Shipper Associations pay no serious attention to the fact that elimination of antitrust immunity, or severe limitations on it, would heighten the transaction costs of their shipper members, and of the carriers with which they do business. As explained in RMB's opening submission in this proceeding, collectively made class rates provide a common basis on which joint rates, offered by two or more carriers needed to transport a shipment from origin to destination, can be efficiently quoted to shippers by bureau member carriers. Absent the common "language" of bureau class rates, carriers and shippers would have to expend much more time and resources negotiating discounts with carriers for this jointly handled traffic. Given the huge volume of shipments transported daily, such transaction costs could significantly increase transportation expenses.

B. The Specific Proposals Offered by the Shipper Associations Should be Rejected, Again

Most of the specific proposals for restricting collective ratemaking offered by the Associations have already been considered and rejected by the Board. Thus, RMB will not dwell at length on responding to these proposals.

The Associations argue that undiscounted class rates should be rebuttably presumed to be unreasonable. This proposal is tantamount to terminating collective ratemaking immunity since carriers would not participate in a system in which any product of their efforts was presumed to be unreasonable. The notion that the Board would have to make a finding of reasonableness in response to every collective action would also impose a difficult burden on the Board in the event that some bureau activity did continue. The burden has long been, and properly remains, on the party alleging unreasonableness to prove such unreasonableness. *See, e.g*, STB Docket No. 41192, *The TJX Companies, Inc.--Petition For Declaratory Order-- Certain Rates And Practices Of Sweeney Transportation, Inc., And Knickerbocker East-West, Inc.* (served Sept. 20,

2002). Further, the Board has a well-established (and judicially confirmed) standard for determining reasonableness based on its comparison of the challenged rate against a market cluster of comparable rates. *See Georgia-Pacific Corp. - Petition for Declaratory Order - Certain Rates and Practices of Oneida Motor Freight, Inc.*, 9 I.C.C.2d 103 (1992); 9 I.C.C.2d 796 (1993); 9 I.C.C.2d 1052, *aff'd sub nom. Oneida Motor Freight v. ICC*, 45 F.3d 503 (D.C. Cir. 1995). The Associations offer no basis for tinkering with this standard by introducing an unwarranted rebuttable presumption.

The Associations argue that automatic discount programs maintained by bureaus should be made mandatory. However, as the Board has previously found, such regulatory action would amount to rate prescription, a form of action disfavored by the Board. *See EC-MAC* (served November 20, 2001) at 8; *EC-MAC* (served March 27, 2003) at 7-8 ("requiring specific minimum discounts could be viewed as prescribing rates, which is not our role or intent."). The Associations note that RMB has reported minimum discounts as low as 25%, as compared to its 35% discount program. However, the 25% discount reported by RMB was the product of an arms-length negotiation between the shipper and carrier. Such a negotiation reflected "actual market conditions" for the traffic at issue, precisely the result favored by the Board in its rejection of a minimum discount approach. *See EC-MAC* (served November 21, 2001) at 8.

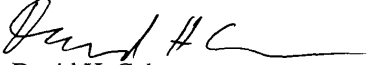
As to process, the Associations urge greater openness in connection with GRI deliberations. Again, the issue has been raised before, and the need for regulatory action rejected. In *EC-MAC*, the Board stated that, "given the infrequency and apparent lack of substantial impact of GRIs, we will not at this time require specific additional procedures for GRIs as a condition for continued approval of rate agreements." *EC-MAC*, (served November 21, 2001) at 11. The Associations offer no specific evidence as to how they have been

disadvantaged by existing ratemaking procedures, which are set forth in the approved agreement of each bureau. In the case of RMB, these procedures require that notice of a GRI be published in RMB's docket bulletin 15 days in advance of consideration of the GRI, and that a meeting -- which is open to shippers and others -- be held to consider the GRI. *See* Section IV(C) of RMB's Tariff Procedures. Further, a GRI is generally made effective 30 days following its adoption, in order to provide timely notice to the shipping public. Thus, the Associations' continued reference to "stealth" increases is illusory. In the competitive transportation market in which carriers and shippers operate, there is no lack of information about available rates.

CONCLUSION

The Associations have failed to show that RMB's immunity should not be continued, or that it should be conditioned. For the reasons offered by RMB in its opening submission and above, approval of RMB's agreement should be continued.

Respectfully submitted,



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Attorney for Rocky Mountain Tariff Bureau, Inc.

April 1, 2005

CERTIFICATE OF SERVICE

I hereby certify that I have this 1st day of April 2005, by first class mail, postage prepaid, served a copy of the foregoing Reply Comments on those parties of record that have filed comments in this proceeding relative to rate bureaus.

David H. Coburn